

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
GTE Telephone Operating Cos.)
GTOC Tariff No. 1)
GTOC Transmittal No. 1148)
)

CC Docket No. 98-79

**REPLY COMMENTS OF
LOGIX COMMUNICATIONS CORPORATION**

Logix Communications Corporation ("Logix") respectfully submits the following reply comments in response to initial comments filed in this proceeding concerning petitions for reconsideration filed by MCI WorldCom, Inc. ("MCI WorldCom") and the National Association of Regulatory Utility Commissioners ("NARUC") of the *DSL Jurisdictional Order*.¹ Logix filed initial comments on January 5, 1999.²

**I. INITIAL COMMENTS AFFIRM THAT "INFORMATION SERVICES" AND
"TELECOMMUNICATIONS" ARE MUTUALLY EXCLUSIVE REGULATORY
CATEGORIES UNDER THE ACT**

In its initial comments, Logix pointed out that the Commission has determined that "information services" and "telecommunications" as defined in Communications Act are

¹ In the Matter of GTE Telephone Operating Cos., Memorandum Opinion and Order, CC Docket No. 98-79, FCC 98-292, released October 30, 1998 ("*DSL Jurisdictional Order*"). See Public Notice, DA 98-2502, released December 4, 1998.

² Comments of Logix Communications Corporation, CC Docket No. 98-79, filed January 5, 1999.

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mutually exclusive regulatory categories.³ Logix pointed out that the Commission has recognized that information services can be provided by means of telecommunications but that information services are cognizable under the Act for regulatory purposes only as an information service.⁴ Thus, under the Commission's long-standing "contamination doctrine" once any enhanced features are added to a telecommunications service it becomes legally transmuted for regulatory purposes into exclusively an information service.⁵ The Commission believes, and Logix agrees, that this approach is the only feasible regulatory treatment of information services in that it is not practical to seek to identify and separately regulate the telecommunications components of an information service. To attempt to do so would create the proverbial "regulatory nightmare."⁶ Thus, as determined by the Commission, the telecommunications components of information services do not under the Act have any separate "legal status."⁷

³ Logix Comments at 2, citing Federal State Joint Board on Universal Service, Report to Congress, 13 FCC Rcd 11501, para. 39 (1998) ("*Report to Congress*").

⁴ *Id.* Report to Congress, paras. 40-41.

⁵ As stated by the Commission: "[u]nder the 'contamination theory' developed in the course of the *Computer II* regulatory regime, [value added networks] that offer enhanced protocol processing services in conjunction with basic transmission services are treated as unregulated enhanced service providers. The enhanced component of their offerings 'contaminates' the basic component, and the entire offering is therefore considered to be enhanced." *Computer III Phase II Recon. Order*, 3 FCC Rcd at 1153, n. 23.

⁶ If the bright line between information services and telecommunications is not maintained, "it would be difficult to devise a sustainable rationale under which all, or essentially all, information services did not fall into the telecommunications category." *Report to Congress*, para. 15.

⁷ *Report to Congress*, para. 79.

Initial comments support the above characterization of the state of the Commission's treatment of telecommunications and information services under the Act. Thus, some commenters explicitly recognize that a telecommunications service becomes an information service as soon as the information service provider offers something more than telecommunications, such as data processing enhancements.⁸ No comments attempt to dispute the Commission's determination that telecommunications and information services are mutually exclusive regulatory categories under the Act.

However, the Commission's analysis in the *DSL Jurisdictional Order* failed to adequately recognize the Commission's long-standing previous determinations concerning its treatment of telecommunications and information services. Logix requests, assuming the Commission does not rescind its jurisdictional determination, that the Commission issue the following clarifications.

The Commission should recognize that its assertion of jurisdiction over DSL service when used to connect to the Internet does not depend on any determination that telecommunications extends past the ISP. Rather, as pointed out by Logix in its initial comments and recognized by other commenters, the Commission under the Act has jurisdiction over interstate communications by wire,⁹ which is an overarching category that encompasses both information services and telecommunications.¹⁰ If the Commission affirms its jurisdiction in this case, it should do so on the ground that there is a continuous interstate communication by

⁸ Ameritech Comments at 5, 8, n. 13; ACI Corp. Comments at 4.

⁹ See e.g., BellSouth Opposition at 3; GTE Opposition at 4.

¹⁰ See 47 U.S.C. Secs. 153(22) and (53).

wire comprised of two separate components - a telecommunications component and an information service component - that are mutually exclusive regulatory categories under the Act. This is the only approach that would be consistent with the Commission's regulatory treatment of information services and telecommunications. Further, Logix submits that founding its jurisdiction on the fact that information services can use telecommunications would unnecessarily restrict the Commission's jurisdiction and conflict with the much broader subject matter jurisdiction of the Commission under Title I of the Act.

The Commission should also state that for regulatory purposes under the Act telecommunications ends where an information service begins. This is the only approach consistent with the Commission's determination in the *Report to Congress* that information services and telecommunications are mutually exclusive regulatory categories under the Act. If telecommunications continued past the information service for regulatory purposes they would not be mutually exclusive regulatory categories.

In this connection, Logix does not believe that it is possible to draw a meaningful distinction between a factual versus legal continuation of telecommunications past an ISP. Thus, Logix disagrees with Ameritech's apparent attempt to do so when it asserts that "[w]hat matters is that telecommunications is, in fact, transmitted elsewhere."¹¹ Like it or not, telecommunications and information services are statutory constructs that can be considered to exist in any situation only by reference to the Act and the Commission's interpretation of it. To reiterate, the Commission has determined that an information service, by definition under the Act, is an offering that involves more than a telecommunications service and that whenever an

¹¹ Ameritech Comments at 6.

enhanced component is added to telecommunications, the entire offering becomes an information service. Thus, there can be no continuation of telecommunications past the ISP because the ISP's service is wholly an information service. To attempt to sort out a separate telecommunications component of an information service as a factual matter is not possible because the "fact" of telecommunications is a construct of the Act that the Commission has determined is not present when any enhanced component is added to telecommunications by operation of the statutory definitions under the Act. Thus, as determined by the Commission, telecommunications and information services are separate regulatory categories under the Act.

II. CONCLUSION

For the foregoing reasons, Logix requests that the Commission on reconsideration, to the extent it does not rescind its jurisdictional determinations, clarify the *DSL Jurisdictional Order* to state that telecommunications and information services are mutually exclusive regulatory categories and that, for regulatory purposes under the Act, telecommunications ends where information services begins.

Respectfully submitted,



Richard M. Rindler
Michael W. Fleming

Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007
(202) 424-7500

Dated: January 19, 1999

Counsel for Logix Communications Corp.

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of January 1999, copies of the foregoing Reply Comments of KMC Telecom, Inc. were served by hand delivery on the parties on the attached service list:


Candise M. Pharr

VIA HAND DELIVERY

Magalie Roman Salas, Esq. (original +10 copies)
Secretary
Federal Communications Commission
The Portals
445 12th Street, SW
TW-A325
Washington, DC

VIA HAND DELIVERY

Richard Lerner
Deputy Chief, Competitive Pricing Division
Federal Communications Commission
1919 M Street, N.W. - Room 518
Washington, DC 20554

VIA HAND DELIVERY

Ed Krachmer
Competitive Pricing Division
Federal Communications Commission
1919 M Street, N.W. - Room 518
Washington, DC 20554

VIA HAND DELIVERY

Kathryn Brown
Chief of Staff
Federal Communications Commission
1919 M Street, N.W. - Room 814
Washington, DC 20554

VIA HAND DELIVERY

Thomas Power
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

VIA HAND DELIVERY

Jane Jackson
Chief, Competitive Pricing Division
Federal Communications Commission
1919 M Street, N.W. - Room 518
Washington, DC 20554

VIA HAND DELIVERY

Tamara Preiss
Competitive Pricing Division
Federal Communications Commission
1919 M Street, N.W. - Room 518
Washington, DC 20554

VIA HAND DELIVERY

International Transcription Service
1231 20th Street, N.W.
Washington, DC 20554

VIA HAND DELIVERY

Chairman William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

VIA HAND DELIVERY

Susan Ness
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

VIA HAND DELIVERY

James L. Casserly
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

VIA HAND DELIVERY

Harold Furchtgott-Roth
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

VIA HAND DELIVERY

Kevin J. Martin
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

VIA HAND DELIVERY

Michael K. Powell
Commissioner Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

VIA HAND DELIVERY

Kyle D. Dixon
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

VIA HAND DELIVERY

Goria Tristani
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 826
Washington, D.C. 20554

VIA HAND DELIVERY

Paul Gallant
Federal Communications Commission
1919 M Street, N.W.
Room 826
Washington, D.C. 20554

VIA HAND DELIVERY

Larry Strickling
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, D.C. 20554